

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5969 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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MANJULA ALIAS RUKHI KOMIBHAI NATHABHAI VAGHARI

Versus

STATE OF GUJARAT  
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Appearance:

MS JAYSHREE C BHATT for Petitioner  
MR KT DAVE AGP for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 12/01/2000

ORAL JUDGEMENT

#. Heard Ms.J.C.Bhatt, learned advocate for the  
petitioner and Mr.K.T.Dave, learned AGP appearing for  
respondents No. 1, 2 & 3.

#. The detention order dated 13-4-1999 passed by

respondent No.2 - Commissioner of Police, Ahmedabad City against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 ('PASA' for short') is challenged in the present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(2), a copy of which is produced at Annexure-B interalia indicates that in all 7 prohibition cases were registered against the petitioner at Amraiwadi Police Station on different dates between 29-4-97 to 12-4-99. That in each case, country made liquor was seized from the possession of the petitioner and except first 2 cases, remaining 4 cases were pending investigation. The grounds also indicate that two witnesses on assurance of their anonymity have given statement regarding the bootlegging activities of the petitioner in respect to incident which occurred on 25-3-1999 and 5-4-1999 respectively. That in consideration of the above said material, the detaining authority has come to the conclusion that the petitioner is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It has been contended at bar that the detaining authority while passing the impugned order has failed to consider the less drastic remedy like claiming cancellation of bail under Section 437(5) of CrPC though available. That thereby impugned order being passed without consideration of the said aspect, is suffering from the vice of non application of mind and as such, invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. On scrutiny of the papers, it appears that the detaining authority has observed in the grounds of

detention that on the date of passing of the order i.e. 13-4-1999, the petitioner / detenu was in police custody in respect to offence registered vide C.R.No : 5201 of 1999. However, it is further observed that on completion of the remand period, the petitioner was likely to make application to claim bail and having got himself released on bail, he would have continued prejudicial activities and thereby, detention order is necessary. The said observation made by the detaining authority clearly discloses that there was no consideration in respect to less drastic remedy like claiming of cancellation of bail while passing the impugned order and as such, I am constrained to hold that the impugned order is bad in law on account of non application of mind.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 13-4-1999 passed by respondent No.2 - The Commissioner of Police, Ahmedabad city against the petitioner is hereby quashed and set aside. The petitioner - Manjula alias Ruki Komibhai Nathabhai Vaghari is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 12-1-2000 [A.K.Trivedi, J.]

#kailash#